IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

JAMES ISHMAEL TIBBS,	§	
	§	
Petitioner,	§	
	§	
v.	§	2:06-CV-0100
	§	
DOUGLAS DRETKE, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

REPORT AND RECOMMENDATION TO DENY
PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner has filed with this Court a petition for a writ of habeas corpus challenging a

December 10, 2005 prison disciplinary proceeding and the resultant loss of forty (40) days

previously accrued good time credits. The disciplinary proceeding took place at the Dalhart Unit

in Hartley County, Texas. As of the date the instant habeas application was filed, petitioner was

still incarcerated at the Dalhart Unit.

In order to challenge a prison disciplinary adjudication by way of a federal petition for a

writ of habeas corpus, a petitioner must, at a minimum, be eligible for mandatory supervised

release <u>and</u> have received a punishment sanction which included forfeiture of previously accrued

good time credits. *See Malchi v. Thaler*, 211 F.3d 953, 958 (5th Cir. 2000). In his response to

the Questionnaire issued by the Court, petitioner advises he is in respondent's custody pursuant

to a conviction for the felony offense of aggravated sexual assault out of Jefferson County,

Texas, and the resulting 19-year sentence. In his application, petitioner contends that, for his

original conviction, there was no finding that he used or exhibited a deadly weapon and that he is

eligible for mandatory supervised release. Petitioner, in fact, is not eligible for mandatory

supervised release under section 508.149(a)(7) of the Texas Government Code (previously Tex.

Code of Crim. Proc. art. 42.18, § 8(c)(6). As petitioner is not eligible for mandatory supervised

release, he is not entitled to any federal habeas corpus relief.

RECOMMENDATION

It is the RECOMMENDATION of the undersigned United States Magistrate Judge to the

United States District Judge that the petition for a writ of habeas corpus filed by petitioner

JAMES ISHMAEL TIBBS be DENIED.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a file-marked copy of this Report and

Recommendation to petitioner by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 9th day of May 2006.

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CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

* NOTICE OF RIGHT TO OBJECT *

Any party may object to these proposed findings, conclusions and recommendation. In
the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing
objections is eleven (11) days from the date of filing as indicated by the file mark on the first

page of this recommendation. Service is complete upon mailing, Fed. R. Civ. P. 5(b), and the parties are allowed a 3-day service by mail extension, Fed. R. Civ. P. 6(e). Therefore, any objections must be filed **on or before the fourteenth (14th) day after this recommendation is filed**. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled "Objections to the Report and Recommendation." Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen,* 857 F.2d 275, 276-77 (5th Cir. 1988).